is found in our books, is certainly moulded in these forms of action, is much and justly lauded as a science of the most logical cast, calculated to eliminate with the utmost precision one certain definite issue of fact or law. That system was much broken in by a statute more than a hundred years old in England, which allowed double pleas, and of course several issues; and practically it is out of use by the latitude given to what is termed the general issue, by which the defendant is permitted, by a general denial, to controvert in mass all the allegations of the plaintiff. Thus a door has been opened to all the uncertainty feared to result from the abolition of forms, but which may really be more effectually guarded against by suitable provisions requiring distinct allegations of all matters of fact insisted on, and distinct denials of such as are controverted. If indeed these allegations, on both sides, should be required to be verified by the oath or affirmation of the parties, the result would, in all probability, be to reduce the number and complexities of the issues in every case.

G. S.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Maine.

SAMUEL VEAZIE *vs.* RUFUS DWINEL.

RUFUS DWINEL *vs.* SAMUEL VEAZIE.

The internal streams of this state, above where the tide ebbs and flows, and above where boat navigation is practicable, are to be regarded as in some sense public highways, for the transportation of rafts of lumber and the floating of logs, in those parts of the state where this species of transportation is of indispensable necessity to, and has been long acquiesced in by, the inhabitants.

In regard to such streams the proprietors of mill sites, and those who erect and use mills thereon, are bound to make and use such mills, with reference to the correlative right in the owners of timber land adjoining such streams, to float the same, at proper stages of water, to places convenient for its manufacture, and for market; and any unreasonable and unnecessary obstruction of this latter use of the stream, either by the mode of erecting mills or dams, on such stream, or by throwing waste rubbish into the stream, or in any other mode, will be regarded as a common nuisance, liable to abatement, and affording just cause of action in favor of such as suffer special damage thereby.

The opinion of the court was delivered by

RICE, J.—The above cases come before the court on full reports of evidence. They all refer to the same subject-matter, and the evidence submitted and the facts admitted or proved, apply with slight exceptions to all. Though the evidence reported is very voluminous, the facts, on which the rights of the parties depend, are neither numerous nor complicated. As a foundation for the application of legal principles pertinent to the issues presented, we state the controlling facts established by the evidence reported. They are as follows:

The Penobscot River, at the point where the mills of the parties are located, is a fresh water stream, not affected by the ebb and flow of the tide, but of sufficient capacity in its natural state to float logs, rafts, and lumber;

That the mill site of Veazie was first occupied as such in 1801, and has been thus occupied from that time to the present; and the mill site of Dwinel has been occupied as such, from 1803 to the present time;

That Dwinel's dams by which the head of water was raised and has been maintained, consist of a structure across the western branch of the main river and a side dam between Goat Island and Webster Island, through which latter structure there has been a sluice for the passage of rafts, logs, &c.;

That Dwinel and his predecessors have ever maintained a convenient and suitable passage way for rafts, logs, and lumber, from Veazie's Mills to and through the sluice in the side dam, except when the same has been obstructed by slabs and other waste material thrown into the same by the occupants of Veazie's Mills, and except also a portion of the year 1854, when the "gap" or "breach" in the side dam was permitted to remain unrepaired;

That the piers placed in the "basin" were constructed with the knowledge and assent of Veazie, and had a tendency, with the boom, attached thereto, to render more safe and convenient the passage for rafts to the sluice, as well as the passage for logs to the mill pond of Dwinel;

That in 1846 Dwinel reconstructed or rebuilt his dam across the

main stream, and increased the efficient height thereof, but not to such an extent as to obstruct the operation of any mills then in existence on the mill site occupied by Veazie;

That the practice of throwing slabs, edgings, and other waste materials into the stream, from mills on the Penobscot river, has prevailed from an early period, and, with few exceptions, prevails at the present day;

These propositions, which we think are well established by the evidence in the case, cover the main facts in controversy, upon which the rights of the parties depend, and the application of established legal principles thereto will dispose of all the cases before us without detailed examination of each particular case.

First, then, do the dams and mills of either party, exist in violation of law? Or in other words do they, or either of them, constitute public or private nuisances?

A nuisance has been defined as any thing that worketh hurt, inconvenience, or damage: 3 Black. Com. 116.

A public or common nuisance is such an inconvenience, or troublesome offence, as annoys the whole community in general, and not merely some particular person: 1 How. 197; 4 Black. Com. 166, 167.

A private nuisance is anything done to the hurt, or annoyance of the lands, tenements, or hereditaments of another: 3 Black. 215.

All erections and impediments made by the owners of adjacent lands to the free use of rivers which are navigable for boats and rafts, are deemed nuisances: 3 Kent Com. 411.

These are general principles, and do not of course apply to obstructions or other inconveniences which are authorized by law. Such are not nuisances: *Trustees* vs. *Utica*, 6 Barb. 313. The subject will be further examined in another part of the case.

To encourage the erection and maintenance of water mills, has long been the established policy of this state, and of Massachusetts before our separation. Our Mill Act, as it is termed, had its origin in the latter state, in the early part of the last century, and has been continued, with slight modifications, both in Massa-

chusetts and this state, to the present time. The object of the statute was thus stated in the preamble to this law, at its origin:

"Whereas it has been found by experience, that when some persons in this province have been at great cost and expenses for building of mills serviceable for the public good and benefit of the town, or considerable neighborhood in or near to which they have been erected, that in raising a suitable head of water for that service, it hath sometimes so happened that some small quantity of lands or meadows have been thereby flowed and damnified, not belonging to the owner or owners of such mill or mills, whereby several controversies and law-suits have arisen, for the prevention whereof for the future. Be it therefore enacted, &c." Ancient Charters, p. 404.

In 1796, February 27, the legislature of Massachusetts passed an additional or amendatory act, the preamble and first section of which are as follows:

"Whereas the erection and support of mills to accommodate the inhabitants of the several parts of the state ought not to be discouraged by many doubts and disputes; and some special provisions are found necessary relative to the flowing of adjacent lands, and mills held by several proprietors. Therefore, Be it enacted, &c."

"That when any person hath already erected, or shall erect any water mill on his own land or on the land of any other person, by his consent legally obtained, and to the working of such mills it shall be found necessary to raise a suitable head of water; and in so doing any lands shall be flowed not belonging to the owner of such mill, it shall be lawful for the owner or occupant of such mill to continue the same head of water on the terms hereinafter mentioned."

This provision was incorporated into our Statutes in 1821, Smith's Laws, Vol. 1, ch. 45, and was in force when the dams on both mill sites now occupied by the parties were originally erected.

It will be perceived that the act is, in its terms, very broad, and applies to all cases whether the streams were navigable or otherwise.

By the Act of 1840, ch. 126, § 1, Rev. St., it is provided that any man may erect and maintain a water mill and dam to raise water for working it, upon and across any stream that is *not navigable* upon the terms and conditions and subject to the regulations hereinafter expressed.

The facts show that Dwinel's dam has been raised since 1840, and it is contended that this has been done without authority, because the river at that point is a navigable stream.

This raises the distinct question, what is a *navigable* stream, within the meaning of the Statute of 1840 ?

There is a distinction at common law between navigable rivers, technically so called, and rivers which have sufficient capacity to float boats, rafts, and logs, and are subjected to the servitude of the public, and which are, therefore, denominated public highways.

All rivers where the tide ebbs and flows are, by the Common Law, denominated navigable rivers: Com. Dig. *Navigation* B. and *Prerogative* D. 50; 3 Kent's Com. 412: *Ward* vs. *Creswell*, 3 Wills 265; *Scott* vs. *Wilson*, 3 N. H. 321.

A river is deemed navigable in the technical sense of the term as high from the mouth as the tide ebbs and flows: Ang. on Watercourses 205; *Berry* vs. *Carl*, 3 Me. 369; *Com.* vs. *Chapin*, 5 Pick. 199; *Spring* vs. *Russell*, 7 Me. 273; *Brown* vs. *Chadbourn*, 31 Me. 9; *Knox* vs. *Chaloner*, 42 Me. 150; *Strout* vs. *Mill-bridge Co.*, 45 Me. 76; *Palmer* vs. *Mulligan*, 3 Caine's R. 307.

Lord HALE in his *De Jure Maris*, ch. 3, says "there be some streams or rivers that are private not only in propriety or ownership, but in use, as little streams and rivers that are not of common passage for the King's people. Again, there be other rivers as well fresh as salt, that are of common or public use for the carriage of boats and lighters, and these, whether fresh or salt, whether they flow and reflow or not, are *prima facie*, *publici juris*, common highways for man or goods, or both from one inland town to another." And he instances the Wey, the Severn, and the Thames, as rivers of that description.

All streams in this state of sufficient capacity, in their natural condition, to float boats, rafts, or logs, are deemed public highways, and as such, subject to the use of the public: *Wadsworth* vs. *Smith*, 2 Fair. 278; *Berry* vs. *Carl*, 3 Me. 269; *Spring* vs. *Russell*, 7 Me. 273; *Brown* vs. *Chadbourn*, 31 Me. 9; *Knox* vs. *Chaloner*, 42 Me. 150.

In *Brown* vs. *Chadbourn*, WELLS, J., remarks, in giving the opinion of the court: "In this state the rights of public use have never been carried so far as to place fresh water streams on the same ground as those in which the tide ebbs and flows, and which alone are considered strictly navigable at common law."

In *Spring* vs. *Russell*, MELLEN, C. J., remarked, "Saco river, in the town of Fryeburg, is one of the character above described; not a navigable river, however deep and large, in common law language, being above tide waters, but is under servitude to the public interests, and over the waters of which the public have a right to pass. In this respect such a river resembles a highway on land."

Though in many of the states of the Union, which are intersected or bounded by the great rivers of the continent, the common law distinction between *navigable* rivers, and those which are simply recognised as *highways*, does not exist; in this state, as has been seen, the common law definition has been fully recognised.

Under our existing mill act this distinction becomes of paramount importance, for were all our streams which are capable of floating rafts or logs, to be deemed *navigable* within the meaning of the statute, it would at once place out of the protection of the law all the mills and dams now existing on the *floatable* streams in the state. The act contemplates no such destructive operation, and cannot receive such construction. The dams of both parties are, therefore, and have been, under the general protection of the mill acts. The case of *Bryant* vs. *Glidden*, 39 Me. 458, is not in conflict with this view of the law, but supports it.

In all cases when the party is entitled to his damage upon complaint under the mill act, his common law remedy by an action

is taken away: *Fisk* vs. *Framingham M. Co.*, 12 Pick. 68; *Baird* vs. *Hunter*, 12 Pick. 555; *Baird* vs. *Wells*, 22 Pick. 312.

But when an upper proprietor has actually built or is building a mill on his privilege, a lower proprietor cannot, without a right acquired by grant, prescription, or actual use, erect a new dam or raise an old one, so as to destroy the upper mill privilege, simply under a liability to pay damages under the mill acts, as those acts do not apply in such a case: *Bigelow* vs. *Newell*, 10 Pick. 348; *Baird* vs. *Wells*, 22 Pick. 212; R. S. 1840, ch. 126, § 2; Do. 1857, ch. 92, § 2.

The lower proprietor cannot therefore erect or maintain his dam in such a manner as to raise the water and obstruct the wheels of the prior occupant above him. His appropriation to that extent, being prior in time, necessarily prevents the proprietor below from raising the water, without interfering with a rightful use already made. Such appropriation of the stream, however, gives the upper proprietor priority of right only so far as the use has been *actual*: *Cary* vs. *Daniels*, 8 Met. 466; *Simpson* vs. *Seavry*, 8 Me. 138.

The case does not show that the dam of Dwinel, as it now exists, causes the water to flow back upon the wheels of Veazie's Mills as they existed at the time said dam was raised. Nor does it appear that the wheels of the Canal Mills, erected *since* that time, have been obstructed in their operation, by means of said dam. Indeed it may be well doubted whether the water in the mill pond of Dwinel or in the "basin," has been materially and permanently raised by the new dam, for the reason that the *side dam and sluice*, which have *not* been raised, afford space for the water to pass off freely in that direction.

But notwithstanding this dam is thus shown to be within the protection of the Mill Acts, and its owner is authorized to maintain a head of water therewith for the operation of his mills, he is not authorized wholly or substantially to obstruct the *navigation* of the stream. The river, as we have seen, though not technically *navigable*, is still a *floatable* stream, and as such may lawfully be used as a highway for the public upon which to float boats, rafts, and logs. Of this right, the public cannot be deprived, nor in its

use unreasonably obstructed. A dam which impedes or obstructs the rights of the public in floating boats or logs in a stream in which they can be floated, must be held to be *pro tanto* a nuisance: *Knox* vs. *Chaloner*, 42 Me. 150.

These rights are not necessarily conflicting. On the contrary, if exercised in a reasonable manner, are materially beneficial to each other. While the mill proprietor may erect and maintain his dam, he must, at the same time, keep open, for the use of the public, a convenient and suitable passage way, through or by his dam. The privileges of the mill owner must be so exercised as not to interfere with the substantial rights of the public in the stream, as a highway, for the purpose of transporting such property as, in its natural capacity, it is capable of floating. The use of both parties must be a reasonable use, and the rights of both must be exercised in a reasonable manner.

The erection and maintenance of water mills has, as we have seen, ever been deemed matter of great public utility by the people of this state. No other branch of industry has received more marked encouragement from our legislature. So, too, the rights of the public to the use of our *floatable* streams, has ever been guarded with jealous care by our courts. They are the great highways over which vast amounts of the property of our citizens are transported to market, and without which much of the wealth of the state would be locked up in inaccessible forests. These two great interests mutually sustain each other. Without the mill, the lumber which now floats on our streams from the distant forests would be comparatively valueless, and without the unobstructed streams, on which to float the product of the forest, the mill would be of little worth. To give either interest absolute prerogative would be destructive to *both*. Hence the rights of each must be so exercised as not unnecessarily or unreasonably to interfere with or obstruct the rights of the other. And such is the law. The maxim, *sic utere tuo ut alienum non lædas*, here applies with its full force.

The evidence shows that Dwinel did provide and maintain a convenient and suitable passage way for rafts and lumber, except

when the pond was obstructed by edgings and other waste material cast into the stream from the mills of Veazie, and also except at a period of time when the side dam was out of repair.

The effect of the breach in the dam has been the subject of investigation and adjudication in an action which has heretofore been determined between the parties. That question is no further important than as it may bear upon the question of review now before the court.

It was declared by this court in the case of *Dwinel* vs. *Veazie*, 44 Me. 167, that the defendant had the right to use the water above his mills to float logs to them, and also to the use of the water to float rafts and lumber to market, and also to float away the waste stuff from his mills, so far as such use was reasonable and conformable to the usages and wants of the community.

This rule, it will be observed, does not afford a very distinct and practical definition of the rights of the parties. How far, it may well be asked, is it reasonable to cast waste material into the stream, which is by law deemed a public highway, to float whither it may, or to sink and obstruct such way, without any direction except mere chance? The testimony shows that the waste from the manufacture of lumber as now conducted has a tendency to sink rapidly, to accumulate in masses, and obstruct the streams into which it is cast. Do the reasonable wants of the community require that such material should be cast at random into our streams, to float whither the currents or the winds may direct, or to sink, and obstruct navigation as it may?

The rights of parties are to be determined by law and not by any local custom or usage, unless there be proof that such custom or usage is certain, general, frequent, and so ancient as to be generally known and acted upon, and unless it shall be adjudged to be reasonable: *Leach* vs. *Perkins*, 17 Me. 462.

All hindrances or obstructions to navigation without direct authority from the legislature, are public nuisances: *Williams* vs. *Wilcox*, 8 Ad. and Ell. 314; *Knox* vs. *Chaloner*, 42 Me. 150.

Any unauthorized obstruction in a highway is a public nuisance: Lew. Cr. Law 526.

A temporary occupation of a part of a street or highway by persons engaged in building, or in receiving or delivering goods from stores or warehouses, or the like, is allowed from the necessity of the case; but a systematic and continued encroachment upon the street, though for the purpose of carrying on a lawful business, is unjustifiable: *People* vs. *Cunningham*, 1 Denio 524.

It is a nuisance at common law to dig a ditch or make a hedge across a highway; to erect a fence or gate across it; to deposit lime or gravel or bricks upon it; or pile logs or lumber or stones therein, or to extend a rope across the same: 1 Hawk. P. C. ch. 78, sec. 48; *Gregory* vs. *Com.*, 2 Dana 417; *Bush* vs. *Steinman*, 1 Bos. and Pul. 404; *Burgess* vs. *Gray*, 1 Man., Gr. and S. 578; *Frost* vs. *Portland*, 11 Me. 271; *Johnson* vs. *Whitefield*, 18 Me. 268; *French* vs. *Brunswick*, 21 Me. 29; *Stetson* vs. *Faxon*, 19 Pick. 147.

The navigation of public rivers is governed by the same principles. The right of the citizen to use such rivers as a highway, must everywhere within reasonable limits accommodate itself to the same rules as in the use of public highways: Angell on Highways, § 229; *Stetson* vs. *Faxon*, 19 Pick. 147.

All unauthorized intrusions upon public highways, for purposes unconnected with the rights of navigation or passage, are nuisances in judgment of law: *Com.* vs. *Caldwell*, 1 Dal. 150.

It was held in *Com.* vs. *Fleming*, Lew. C. L. 534, that logs lying in the river Susquehanna, in places where the bed of the river was covered with water at the time, and susceptible of being used for purposes of navigation, if deposited there for mere private convenience, and for no purpose connected with the right of navigation, constituted a nuisance in judgment of law.

Lord HALE, in his treatise *De Portibus Maris*, notices among others the following nuisances that may be committed to ports; tilting or choking up the port by sinking vessels, or throwing out *filth* or *trash;* decays of wharves, piers, or quays; leaving anchors without buoys; building new weirs or enhancing old; the straitening of the port by building too far into the water, and the suffering a port or passage to be filled or stopped up.

The authorities, ancient and modern, are all consistent, and point in one direction. Highways, whether on land or water, are designed for the accommodation of the public, for travel or transportation, and any unauthorized or unreasonable obstruction thereof is a public nuisance in judgment of the law. They cannot be made the receptacles of waste materials, filth or trash, nor the depositories of valuable property even, so as to obstruct their use as public highways. All such obstructions, in the eye of the law, are deemed unreasonable.

As has already been remarked, the owner of a mill dam upon a public stream is bound to provide a suitable, safe, and convenient passage through or by his dam for purposes of navigation. But such passage way or channel can only be used for purposes of navigation. It would be equally a violation of law to encumber it with unauthorized obstructions, as thus to encumber the stream in its natural channel or course.

If, therefore, any person obstruct a stream, which is by law a public highway, by casting therein waste material, filth or trash, or by depositing material of any description except as connected with the reasonable use of such stream as a highway, or by direct authority of law, he does it at his peril—it is a public nuisance, for which he would be liable to an indictment, and to an action at law by any individual who should be specially damaged thereby: Angell on Watercourses, sec. 567; *Cole* vs. *Sprowl*, 35 Me. 161. No length of time can legitimate or enable a party to prescribe for a public nuisance: *People* vs. *Cunningham*, 1 Denio 524; *Mills* vs. *Hall*, 9 Wend. 315; *Com.* vs. *Upton*, 6 Gray 473; *Brown* vs. *Watson*, 47 Me. 161.

It is contended that Veazie has acquired a right by prescription to a passage through the old sluice in Dwinel's main dam, for slabs and other waste from his mills. The evidence does not sustain this proposition. It does appear, that, for many years, there was a sluice or waste way through Dwinel's dam which was used by the owners of that dam to discharge waste and other materials from their mill pond, and through which, at high stages of water, slabs and waste from Veazie's Mills also passed. But there is no

evidence tending to show that the owners or occupants of Veazie's Mills ever claimed the right to control or use that sluice for such purpose, or in fact ever exercised such control. But, on the contrary, the evidence does show that the occupants of those mills have cast their slabs, edgings, and waste into the stream, to sink or float, without direction or control on their part, and that, while some portions thereof have undoubtedly passed over Dwinel's main dam, or through the sluice therein, and other portions through the board sluice and over the side dam, other portions still have sunk in the "basin," choked up the rafting channel, and, to some extent, obstructed the mill pond of Dwinel. The practice, however, if exercised under a claim of right, was manifestly under the claim of a right to cast waste into the stream, there to remain without further direction or control, and not under a claim to have it deposited to remain in a particular place, or to float it through a particular channel. Such casual passage of slabs through the sluice in Dwinel's dam would give Veazie no prescriptive right therein. As well might one who should, without authority, turn animals upon the highway to graze, claim a prescriptive right to all the land upon which those animals might chance to stray. A prescriptive right can only be obtained by adverse user, under claim of right. Nor, would the practice of casting his waste into the stream or the channel provided for rafting boards and running logs, it matters not how long this practice has been continued, give a prescriptive right to continue the same if the stream or channel was thereby obstructed: *Knox* vs. *Chaloner*, 42 Me. 150; *Rex* vs. *Ward*, 4 Adol. & El. 384; *Gates* vs. *Blencoe*, 2 Dana 158; Angell on W. C., § 562.

The evidence establishes the fact that Dwinel's main dam has been abutted upon and connected with Webster's Island, substantially as it now is, for more than half a century. Under such circumstances a right thus to maintain it must be presumed. We do not find any evidence tending to establish such acts of trespass by Dwinel of the lands of Veazie situate on Webster's Island as are described in either of his writs.

It is admitted that Gen. Veazie has not run his mills himself

since December 1854, but that the mills since that time have been operated by his lessees. The defendant was not liable for the tortious acts of his lessees unless authorized by him, anterior to the act of April 2d, 1859, ch. 98: *Dwinel* vs. *Veazie*, 44 Me. 167.

The leases in the case show that they had no such authority as would render Veazie liable for their acts prior to that time.

The foregoing opinion comes to us through the kindness of Mr. Justice RICE. We have read the opinion with a good deal of interest, and although at first hesitating about its publication in our Journal, on account of its great length, we have finally come to the conclusion, that the peculiar nature of some of the questions discussed, and the careful and thorough manner in which they are presented, will render it more acceptable to our readers than anything else we could give them.

We had occasion to advert to this subject in discussing the rights of Eminent Domain, in regard to railways, Redfield on Railw. 168, 169 and notes. It seems to have been long ago conceded, in this country, that the common law rule in regard to the navigability of freshwater streams will not apply to the great inland streams of this continent, some of which are navigable for hundreds of miles above where the tide ebbs and flows. The question is extensively discussed in McManus *vs.* Carmichael, 5 Am. Law. Reg. 593, by Mr. Justice WOODWARD. The early cases are here reviewed with great learning and ability, and the rule declared that all waters are to be regarded as navigable above where the tide ebbs and flows, which are of common use to all the citizens of the republic for purposes of navigation; and that navigability, in fact, is to be regarded as the decisive test, and not the ebb and flow of the tide.

The question is discussed by Mr. Justice MCLEAN in Bowman *vs.* Wathen, 2 McLean's C. C. R. 376, and the exclusive right of the riparian owner vindicated to the point of highwater mark, and as much further toward the middle line of the stream as may be convenient for making erections, accessary to the navigation, without obstructing the same. The question was further considered by the same learned Judge in Works *vs.* Junction Railroad, 5 McLean's C. C. R. 425, and in United States *vs.* Railroad Bridge Company, 6 Id. 517. The question is discussed also in Lehigh Valley Railway *vs.* Trone, 28 Penna. 206; Barclay Railroad & Coal Co. *v.* Ingraham, 36 Id. 194; Flanagan *v.* City of Philadelphia, 42 Id. 219. In the latter case it is held that as to navigable waters exclusively within the limits of the state, it is competent for the state legislature to diminish the power of navigability by the erection of a bridge at or below tide-water.

The question was considerably discussed by the United States Supreme Court in the case of State of Pennsylvania *vs.* Wheeling Bridge Company, 13 How. 518; s. c., 18 Id. 421.

When this case was last before the court, it was held, that the paramount authority of Congress, in the regulation of commerce, included the power to determine what was an obstruction to navigation. And Congress having by legislative act legalized the defendants' bridge, since the judgment of the court declaring it liable to abatement as a

common nuisance, obstructing the navigation of the Ohio River; but before that judgment was carried into effect it was considered that there was no reason now for carrying that judgment into execution.

Mr. Justice NELSON here thus lays down the rule of law as to streams exclusively under state control: "The purely internal streams of a state, which are navigable, belong to the riparian owners to the thread of the stream," and they have a right to use them "subject to the public right of navigation." They may construct wharves, or dams, or canals, for the purpose of subjecting the stream to the various uses to which it may be applied, subject to this public easement. But if these structures materially interfere with the public right, the obstruction may be removed or abated as a public nuisance." "These purely internal streams of a state, as to the public right of navigation, are exclusively under the control of the state legislature." And although erections authorized by grant from the state legislature cause "real impediment to the navigation," they are nevertheless lawful, and the riparian owner has no redress. This subject is somewhat considered in Morgan *vs.* King, 18 Barb. 277.

There can be no question, we think, that the rule of law that the internal rivers of a state in a section of country where rafting and floating logs is of essential interest, are to be regarded as in the nature of public highways, for that purpose open to the free use of all who have occasion so to use them, is founded in the soundest principle; and that it is, in fact, nothing more than the reasonable extension of the former rule by which navigability has been referred to the necessities of the circumstances and condition in which the people and the country are placed. I. F. R.

Supreme Court of Pennsylvania.

TWELLS *vs.* THE PENNSYLVANIA RAILROAD COMPANY.

Though a railroad company may have power under special statutes to discriminate in its rates of charge between "local" and other freights, yet it cannot make any such discrimination on the ground that certain freight is to be carried to its final destination by another route after reaching the terminus of the company's road.

The opinion of the court was delivered by

STRONG, J.—The substantial question in this case is, whether the defendants may rightfully demand from the complainant higher rates for transporting over their railroad coal oil consigned to him at Philadelphia, and received by them for carriage at Pittsburgh, than they demand of shippers generally from the same place of loading to the same place of delivery, merely because the com-